

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF MASSACHUSETTS

Civil Action No; 1:22-cv-10364

MAN AGAINST XTINCTION A/K/A “M.A.X” **FN1**

As the “Public Citizen Prosecutor”

V.

DANIEL MCKIERNAN *et al.*

.As “Whale Killing” Defendants

JUDGE INDIRA TALWANI IS A “WHALE KILLING BASTARD”

Plaintiff — Man Against Xtinction — SPEAKS in the VENACULAR —

In 2021 seven lawyers consumed at least \$one-and-a-half-million-dollars\$ in fees and costs in a *pro bono* prosecution resulting in a two week long trial of the Massachusetts marine fishing agency for its multi-decadal (i.e. since 1973 at least) routine catching and killing of ESA Listed Species of whales and sea turtles. One of these whales species is the Northern Black Whale. In 1996 I first prosecuted the Division of Marine Fisheries for regulating lobsterpot and gillnet fishing in a manner that guaranteed the repeated catching and killing of this species. At that time, the Black Whale population had a moderate rate of growth in its numbers. Almost twenty years later during the 2021 trial, uncontested evidence was presented that the Back Whale’s population numbers are now crashing at the rate of more than 10% a year. The Black Whale species is now expected to be extinct by 2040.

In 1996 Judge Woodlock ruled that the DMF’s regulation of fishing constituted an ESA Section 9 prohibited taking of ESA Listed Species of whales including the Black Whale. Despite this ruling Woodlock refused to stop DMF’s catching and killings of the Black Whale. In short, as a federal judge he refused to enforce the ESA Section 9 rake prohibitions against the DMF. He wrongly yielded to DMF as a government agency and wrongly granted to it – without any authorization by statute – the discretionary authority to kill at will ESA Listed Species of wildlife.

In 2022, Judge Talwani doubled down on the willingness of federal judges in the First Circuit to refuse to enforce the ESA 9 take prohibitions against government violators. Talwani, following Woodlock’s precedent, granted to the DMF a discretionary authority – not granted to any government agency by statute -- to catch and kill at will ESA Listed Species of whales and sea turtles. After trial Talwani issued two separate decisions. In its 60 page decision, Talwani found that the DMF was

¹ Man Against Xtinction is bringing the instant action pursuant to his authority to petition the Court provided to him by the Petition Clause of the First Amendment.

likely to continue catching and killing Black Whales in the future in violation of the ESA's Section 9 take prohibitions. Then it refused to enjoin the DMF in any manner to stop these future catching and killing of critically endangered Black Whales. As justification for its refusal to enforce the ESA, it claimed that doing so would hurt commercial fishermen and under the common law it did not have to enforce ESA take prohibitions if doing so would inflict economic losses on the fishing industry.

But its ruling got more ridiculous. It claimed – without any cited authority by statute or in case law -- that it could recognize that DMF had discretion to keep on catching and killing Black Whales without consequence as a government agency. It claimed that since NMFS was not enforcing the ESA Section 9 take prohibitions against the DMF the court would let DMF keep killing and catching Black Whales till they went extinct. It would defer to NMFS to enforce the ESA against the state based on its rulings.

Talwani got the ESA WRONG! The ESA explicitly requires federal judges to enforce the ESA take prohibitions against anyone whose activities are resulting in incidents of ESA protected wildlife being taken by it. This includes enforcing the ESA against government agencies even NMFS/DMF when their activities are causing ESA protected wildlife getting caught and killed by these agency activities.

To ignore its enforcement duties under the ESA, Talwani reached deep into English common law to override the Congress' ESA § 9 prohibiting the killing of endangered wildlife by even government agencies. FIRST, she used the doctrine of *ferae naturae* (literally translated as “born to be wild.”). This common law doctrine says wildlife is crazy, is uncontrollable, and no one is liable for damage caused by wildlife. So according to Talwani fishers do not catch whales. Whales run into fishers' fishing gear and senselessly destroy it. No fisher can be accused of killing a crazy whale that runs into its gear. At worst whales are accidental “road kill.”

SECOND, at present NMFS is legally responsible for enforcing the ESA. Talwani wrongly assumes that if NMFS says that something is not a taking, it is legally not a taking. Case closed. Then she exploits the medieval English law maxim of "*Qui tacet consentit*" translated as "*Silence gives consent.*" Talwani chooses to interpret NMFS refusal to enforce the ESA against fishers in general and DMF specifically as NMFS' silent consent to these prohibited catching and killing of ESA Listed Species of whales. Since Talwani crazily believes that NMFS is consenting in silence to these killings, she claims to be bowing to NMFS enforcement authority and refusing to stop DMF from doing what NMFS is allowing DMF to do. FN2

This explains the directive to DMF in the final paragraph of her 60 page ruling –

“Further, the court would enjoin the Division of Marine Fisheries to continue its good faith efforts to obtain a ... take permit from NMFS and, in the event that these efforts

² *A Man for All Seasons*: Cromwell: “He calls this silence. Yet is there a man in this court, is there a man in this country, who does not know Sir Thomas More's opinion of the King's title? Of course not! But how can that be? Because the silence betokened-nay, this silence was not silence at all but most eloquent denial.” Thomas More: “Not so, Master Secretary, that maxim is *qui tacet consentire*. The maxim of the law is “Silence gives consent.” If therefore you wish to construe what my silence “betoken” you must construe that I consented, not that I denied.”

were finally rejected, to cease permitting the deployment of vertical buoy ropes in Massachusetts waters.”

In short, Talwani admits the DMF is violating the ESA but refuses to do anything, since NMFS appears to be agreeing in silence to DMF's catching and killing Black Whales, but wants DMF to get a written confirmation from NMFS that DMF's catching Black Whales is OK with it. If it is not, then Talwani will begin to enforce the ESA against DMF.

There is no more time left to stop the extinction of the Black Whale species that is mostly caused by both NMFS and DMF licensing and regulating of the New England lobsterpot and gillnet fisheries. Since Talwani has refused to enforce the ESA Section 9 take prohibitions against either NMFS or the DMF, it is responsible for the inevitable extinction of the Black Whale as is NMFS and the DMF.

Then there is the “salt in the wound” order it also issued after trial that shows Talwani's malicious motivations for what they are and reveals its criminal intent to deliberately and maliciously to align itself with the commercial fishing industry and to become its self-appointed protector.

In its second ruling it dismissed my ESA prosecution by first insulting me as a liar and then ruling that I had no “skin in the game” underlying my attempt to enforce the ESA to stop the killing by DMF and the extinction of the Black Whale. It just dismissed my prosecution claiming I had no “standing” to bring it. Let me explain standing. A tourist who pays to go whale watching one time and gets to see a dolphin during the trip while its knocking back a few beers to enhance the experience has “standing” to enforce the ESA according to Talwani. But my many decade battle to recover the Black Whale species, spending a lot of money and thousands of hours each year to do so means squat to Talwani. In fact, Talwani ruled that only people who want to exploit the whale physically for personal enjoyment or commerce had standing to sue to protect the whale. DOES THAT MAKE SENSE? According to Talwani if you want to protect the whale and recover it from its endangered status, you have no standing to sue to protect the whale. But if you want to eat it, jerk off while chasing it with a boat, or sell its parts to collectors you got standing to sue to protect it. BUT WHO THE FUGG IS GOING TO PROTECT A SPECIES THAT IS EXPLOITING IT IN THE FIRST PLACE?

Talwani is interpreting the ESA ass backwards. It believes that ESA lawsuits are only intended to protect the plaintiff from having the ESA enforced against it. It maliciously claims that it is obligated as a judge to believe that state and federal fishing agencies only want to zealously protect the whale and a judge has got to let them handle enforcement of the ESA as they see fit. Talwani only believes that the ESA only allows a plaintiff to ask a judge NOT to let NMFS/DMF enforce the ESA against them.

Talwani's TOXIC and fugged up attitude towards the ESA is wholly based on her political beliefs that the Democratic Party should be allowed to do whatever it wants to protect the marine fishing industry of Massachusetts as an ethnic culture. Talwani got appointed to the court based on ethnic and sexual discrimination as a willing soldier in the current cultural wars over woke and retributational racism. The Democratic Party in Massachusetts only wants to appoint to the federal court female judges belonging to favored ethnic groups. The last three judicial appointments to the Massachusetts bench were ethnic women. These individuals oppose environmental protection and anyone challenging the criminal acts of favored cultural groups like commercial fishers which these

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racist judges believes constitute a legally protected ethnic/occupation culture on the same level as native Amerikans or women who crazily believe they are cats.

Summary

JUDGE INDIRA TALWANI IS A "WHALE KILLING BASTARD."

It should be prosecuted for this crime as should any fisher from her favorite "ethnic/occupational culture" whose fishing routinely gear catches and kills Black Whales.

BY:

/s/ Richard Maximus Strahan

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Vir Rei Publicae Necessarius Est

I certify that a copy of this document has been served TODAY on the Defendants by the ECF filing system. /s/ Richard Maximus Strahan